

Adopted	Rejected
---------	----------

## COMMITTEE REPORT

YES:	12
NO:	0

### MR. SPEAKER:

*Your Committee on* **Judiciary**, to which was referred Senate Bill 48, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 6-1.1-12-17.9 IS ADDED TO THE INDIANA
- 4       CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 5       [EFFECTIVE JULY 1, 2007]: **Sec. 17.9. A trust is entitled to a**
- 6       **deduction under section 9, 11, 13, 14, 16, or 17.4 of this chapter for**
- 7       **real property owned by the trust and occupied by an individual if**
- 8       **the county auditor determines that the individual:**
- 9               **(1) upon verification in the body of the deed or otherwise, has**
- 10              **a beneficial interest in the trust;**
- 11              **(2) otherwise qualifies for the deduction; and**
- 12              **(3) would be considered the owner of the real property under**
- 13              **IC 6-1.1-1-9(f).**
- 14       SECTION 2. IC 29-1-1-12 IS AMENDED TO READ AS
- 15       FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 12. (a)** Unless waived
- 16       and except as otherwise provided by law, all notices required by this

article to be served upon any person shall be served as the court shall direct by rule or in a particular case, ~~either:~~ **by:**

~~(a) by (1)~~ delivering a copy of the ~~same notice~~ to ~~such the~~ person or by leaving a copy of the ~~same notice~~ at ~~his the person's~~ last and usual place of residence, at least ten (10) days before the hearing, if ~~he the person~~ is a resident of the state of Indiana;

~~(b) by (2)~~ publication, if the person is a nonresident of the state of Indiana or if ~~his the person's~~ residence is unknown, once each week for three (3) weeks consecutively in ~~some a~~ newspaper printed and circulating in the county where ~~said the~~ court is held, the first day of publication to be at least thirty (30) days prior to the date set for hearing; or in case there ~~be is~~ no newspaper printed in ~~said the~~ county, then in ~~some a~~ newspaper circulating in the county where the proceeding is pending, and designated by the judge or clerk;

~~(c) by registered or certified mail; requesting a return receipt; (3)~~ **first class postage prepaid mail** addressed to ~~such the~~ person located in the United States, at ~~his the person's~~ address stated in the petition for the hearing, to be posted by depositing in any United States post office in this state at least fourteen (14) days prior to the date set for hearing in ~~said the~~ notice;

~~(d) by (4)~~ personal service on nonresidents to be served by any officer authorized to serve process in the county of the nonresident, which notice shall be served at least fourteen (14) days prior to the date set for hearing in such notice; or

~~(e) by (5)~~ any combination of two (2) or more of the above.

**(b)** In all cases where service by publication is ordered but personal service or service by registered mail is not ordered, all persons directed by the provisions of this article, or by order of the court, to be notified, whose names and addresses are known or can by reasonable diligence be ascertained by the party charged with the duty of giving ~~such~~ notice, shall in addition to ~~such the~~ published notice **required by order**, be served by a written notice by United States **first class postage prepaid** mail at least fourteen (14) days prior to the date set for hearing in ~~said the~~ notice.

**(c)** The personal representative or party charged with the duty of giving ~~said~~ notice shall furnish the clerk with sufficient copies of ~~said the~~ notice, prepared for mailing, and the clerk shall mail the ~~same~~:

1     **notice.**

2         SECTION 3. IC 29-1-7-7 IS AMENDED TO READ AS FOLLOWS  
 3     [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) As soon as letters  
 4     testamentary or of administration, general or special, supervised or  
 5     unsupervised, have been issued, the clerk of the court shall publish  
 6     notice of the estate administration.

7         (b) The notice required under subsection (a) shall be published in  
 8     a newspaper of general circulation, printed in the English language and  
 9     published in the county where the court is located, once each week for  
 10    two (2) consecutive weeks. A copy of the notice, with proof of  
 11    publication, shall be filed with the clerk of the court as a part of the  
 12    administration of the estate within thirty (30) days after the publication.  
 13    If no newspaper is published in the county, the notice shall be  
 14    published in a newspaper published in an adjacent county.

15        (c) The notice required under subsection (a) shall be served by  
 16    **certified** mail on each heir, devisee, legatee, and known creditor whose  
 17    name and address is set forth in the petition for probate or letters. The  
 18    personal representative shall furnish sufficient copies of the notice,  
 19    prepared for mailing, and the clerk of the court shall mail the notice  
 20    upon the issuance of letters.

21        (d) The personal representative or the personal representative's  
 22    agent shall serve notice on each creditor of the decedent:

23           (1) whose name is not set forth in the petition for probate or  
 24           letters under subsection (c);

25           (2) who is known or reasonably ascertainable within one (1)  
 26           month after the first publication of notice under subsection (a);  
 27           and

28           (3) whose claim has not been paid or settled by the personal  
 29           representative.

30    The notice may be served by **certified** mail or any other means  
 31    reasonably calculated to ensure actual receipt of the notice by a  
 32    creditor.

33        (e) Notice under subsection (d) shall be served within one (1) month  
 34    after the first publication of notice under subsection (a) or as soon as  
 35    possible after the elapse of one (1) month. If the personal representative  
 36    or the personal representative's agent fails to give notice to a known or  
 37    reasonably ascertainable creditor of the decedent under subsection (d)  
 38    within one (1) month after the first publication of notice under

subsubsection (a), the period during which the creditor may submit a claim against the estate includes an additional period ending two (2) months after the date notice is given to the creditor under subsection (d). However, a claim filed under IC 29-1-14-1(a) more than nine (9) months after the death of the decedent is barred.

(f) A schedule of creditors that received notice under subsection (d) shall be delivered to the clerk of the court as soon as possible after notice is given.

(g) The giving of notice to a creditor or the listing of a creditor on the schedule delivered to the clerk of the court does not constitute an admission by the personal representative that the creditor has an allowable claim against the estate.

(h) If any person entitled to receive notice under this section is under a legal disability, the notice may be served upon or waived by the person's natural or legal guardian or by the person who has care and custody of the person.

(i) The notice shall read substantially as follows:

#### NOTICE OF ADMINISTRATION

In the \_\_\_\_\_ Court of \_\_\_\_\_ County, Indiana.

Notice is hereby given that \_\_\_\_\_ was, on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, appointed personal representative of the estate of \_\_\_\_\_, deceased, who died on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

All persons who have claims against this estate, whether or not now due, must file the claim in the office of the clerk of this court within three (3) months from the date of the first publication of this notice, or within nine (9) months after the decedent's death, whichever is earlier, or the claims will be forever barred.

Dated at \_\_\_\_\_, Indiana, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

\_\_\_\_\_  
CLERK OF THE \_\_\_\_\_ COURT  
FOR \_\_\_\_\_ COUNTY, INDIANA".

Page 7, between lines 36 and 37, begin a new paragraph and insert:

"SECTION 7. IC 29-1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) If it appears that the value of a decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of:

(1) ~~twenty-five~~ **fifty** thousand dollars (~~\$25,000~~); (**\$50,000**);

(2) the costs and expenses of administration; and

(3) reasonable funeral expenses;  
 the personal representative or a person acting on behalf of the distributees, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to it and file a closing statement as provided in section 4 of this chapter.

(b) If an estate described in subsection (a) includes real property, an affidavit may be recorded in the office of the recorder in the county in which the real property is located. The affidavit must contain the following:

(1) The legal description of the real property.

(2) The following statement: "It appears that the decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of the following: ~~twenty-five~~ **fifty** thousand dollars ~~(\$25,000)~~, **(\$50,000)**, the costs and expenses of administration, and reasonable funeral expenses."

(3) The name of each person entitled to at least a part interest in the real property as a result of a decedent's death, the share to which each person is entitled, and whether the share is a divided or undivided interest.

(4) A statement which explains how each person's share has been determined.

SECTION 8. IC 29-1-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative or a person acting on behalf of the distributees may close an estate administered under the summary procedures of section 3 of this chapter by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the personal representative or person acting on behalf of the distributees the value of the gross probate estate, less liens and encumbrances, did not exceed the sum of:

~~(A) the allowance, if any, provided by IC 29-1-4-1;~~

**(A) fifty thousand dollars (\$50,000);**

**(B) the costs and expenses of administration; and**

**(C) reasonable funeral expenses;**

(2) the personal representative or person acting on behalf of the distributees has fully administered the estate by disbursing and

1 distributing it to the persons entitled to it; and

2 (3) the personal representative or person acting on behalf of the  
3 distributees has sent a copy of the closing statement to all  
4 distributees of the estate and to all creditors or other claimants of  
5 whom ~~he~~ **the personal representative or person acting on**  
6 **behalf of the distributees** is aware and has furnished a full  
7 account in writing of ~~his~~ **the** administration to the distributees  
8 whose interests are affected.

9 (b) If no actions, claims, objections, or proceedings involving the  
10 personal representative or person acting on behalf of the distributees  
11 are filed in the court within three (3) months after the closing statement  
12 is filed, the appointment of the personal representative or the duties of  
13 the person acting on behalf of the distributees terminate.

14 (c) A closing statement filed under this section has the same effect  
15 as one (1) filed under IC 29-1-7.5-4.

16 (d) A copy of any affidavit recorded under section 3(b) of this  
17 chapter must be attached to the closing statement filed under this  
18 section."

19 Page 8, between lines 9 and 10, begin a new paragraph and insert:

20 "SECTION 10. IC 29-1-17-2 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) After the  
22 expiration of the time limit for the filing of claims, and after all claims  
23 against the estate, including state and federal inheritance and estate  
24 taxes, have been determined, paid, or provision made therefor, except  
25 contingent and unmatured claims which cannot then be paid, the  
26 personal representative shall, if the estate is in a condition to be closed,  
27 render ~~his~~ **a** final account and at the same time petition the court to  
28 decree the final distribution of the estate. Notice of the hearing of the  
29 petition shall be given ~~to all interested persons.~~ **under IC 29-1-16-6.**

30 (b) In its decree of final distribution, the court shall designate the  
31 persons to whom distribution is to be made, and the proportions or  
32 parts of the estate, or the amounts, to which each is entitled under the  
33 will and the provisions of this probate code, including the provisions  
34 regarding advancements, election by the surviving spouse, lapse,  
35 renunciation, adjudicated compromise of controversies, and retainer.  
36 Every tract of real property so distributed shall be specifically  
37 described therein. The decree shall find that all state and federal  
38 inheritance and estate taxes are paid, and if all claims have been paid,

1 it shall so state; otherwise, the decree shall state that all claims except  
 2 those therein specified are paid and shall describe the claims for the  
 3 payment of which a special fund is set aside, and the amount of such  
 4 fund. If any contingent claims which have been duly allowed are still  
 5 unpaid and have not become absolute, such claims shall be described  
 6 in the decree, which shall state whether the distributees take subject to  
 7 them. If a fund is set aside for the payment of contingent claims, the  
 8 decree shall provide for the distribution of such fund in the event that  
 9 all or a part of it is not needed to satisfy such contingent claims. If a  
 10 decree of partial distribution has been previously made, the decree of  
 11 final distribution shall expressly confirm it, or, for good cause, shall  
 12 modify said decree and state specifically what modifications are made.

13 (c) If a distributee dies before distribution to ~~him~~ **the distributee** of  
 14 ~~his the distributee's~~ share of the estate, ~~such the distributee's~~ share  
 15 may be distributed to the personal representative of ~~his the~~  
 16 **distributee's** estate, if there ~~be~~ **is** one; or if no administration on ~~his the~~  
 17 **deceased distributee's** estate is had and none is necessary according  
 18 to IC ~~1971~~, 29-1-8, the share of ~~such the deceased~~ distributee shall be  
 19 distributed in accordance ~~therewith~~ **with IC 29-1-8**.

20 (d) The decree of final distribution shall be a conclusive  
 21 determination of the persons who are the successors in interest to the  
 22 estate of the decedent and of the extent and character of their interest  
 23 therein, subject only to the right of appeal and the right to reopen the  
 24 decree. It shall operate as the final adjudication of the transfer of the  
 25 right, title, and interest of the decedent to the distributees therein  
 26 designated; but no transfer before or after the decedent's death by an  
 27 heir or devisee shall affect the decree, nor shall the decree affect any  
 28 rights so acquired by grantees from the heirs or devisees.

29 (e) Whenever the decree of final distribution includes real property,  
 30 a certified copy thereof shall be recorded by the personal representative  
 31 in every county of this state in which any real property distributed by  
 32 the decree is situated except the county in which the estate is  
 33 administered. The cost of recording such decree shall be charged to the  
 34 estate.

35 SECTION 11. IC 29-1-19-8 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. Upon the filing of a  
 37 petition for the appointment of a guardian or the issuance of a  
 38 protective order under this article, notice shall be given to the

1 incapacitated person, ~~and to other persons, in the manner provided by~~  
 2 ~~IC 29-3-6, and also to the Department as provided by this chapter.~~  
 3 **department by certified mail.**

4 SECTION 12. IC 29-3-6-1 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) When a petition  
 6 for appointment of a guardian or for the issuance of a protective order  
 7 is filed with the court, notice of the petition and the hearing on the  
 8 petition shall be given **by certified mail** as follows:

9 (1) If the petition is for the appointment of a successor guardian,  
 10 notice shall be given unless the court, for good cause shown,  
 11 orders that notice is not necessary.

12 (2) If the petition is for the appointment of a temporary guardian,  
 13 notice shall be given as required by IC 29-3-3-4(a).

14 (3) If the subject of the petition is a minor, notice of the petition  
 15 and the hearing on the petition shall be given to the following  
 16 persons whose whereabouts can be determined upon reasonable  
 17 inquiry:

18 (A) The minor, if at least fourteen (14) years of age, unless the  
 19 minor has signed the petition.

20 (B) Any living parent of the minor, unless parental rights have  
 21 been terminated by a court order.

22 (C) Any person alleged to have had the principal care and  
 23 custody of the minor during the sixty (60) days preceding the  
 24 filing of the petition.

25 (D) Any other person that the court directs.

26 (4) If it is alleged that the person is an incapacitated person,  
 27 notice of the petition and the hearing on the petition shall be given  
 28 to the following persons whose whereabouts can be determined  
 29 upon reasonable inquiry:

30 (A) The alleged incapacitated person, the alleged incapacitated  
 31 person's spouse, and the alleged incapacitated person's adult  
 32 children, or if none, the alleged incapacitated person's parents.

33 (B) Any person who is serving as a guardian for, or who has  
 34 the care and custody of, the alleged incapacitated person.

35 (C) In case no person other than the incapacitated person is  
 36 notified under clause (A), at least one (1) of the persons most  
 37 closely related by blood or marriage to the alleged  
 38 incapacitated person.



(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

(B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

~~(c) All notices required by this section shall be given in the manner prescribed by IC 29-1-1-12 through IC 29-1-1-14."~~

Page 12, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 18. IC 32-38 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

**ARTICLE 38. TITLE INSURANCE AND TRANSFERS TO CERTAIN TRUSTS**

**Chapter 1. Application**

**Sec. 1. This article applies to a policy or commitment issued after June 30, 2007.**

**Chapter 2. Definitions**

**Sec. 1. The definitions in IC 27-7-3-2 apply throughout this article.**

**Sec. 2. "Commitment" means a commitment for title insurance.**

**Sec. 3. "Estate" has the meaning set forth in IC 29-1-1-3.**

**Sec. 4. "Named insured owner" means the person identified in a policy or commitment as the insured owner or the proposed**

insured owner of an interest in real property that is insured or proposed to be insured under the policy or commitment.

Sec. 5. "Personal representative" has the meaning set forth in IC 29-1-1-3.

Sec. 6. "Policy" means a title insurance policy.

Sec. 7. "Power of appointment" means a power of appointment described in IC 32-17-6.

Sec. 8. "Trust" has the meaning set forth in IC 30-4-1-1.

### Chapter 3. Transfers to Certain Trusts

Sec. 1. The trustee of a trust is considered to be the insured owner under a policy or commitment that insures or proposes to insure an interest in real property that is transferred to the trust if:

(1) the transferee of the interest in real property is the trustee of the trust, the trust was established by the named insured owner, and the transferor is the named insured owner;

(2) the named insured owner reserves the right to amend or revoke the trust during the named insured owner's lifetime;

(3) the named insured owner is a natural person; and

(4) the transfer of the interest in real property is made by the named insured owner personally or by:

(A) the named insured owner's attorney in fact;

(B) the named insured owner's guardian or other similar person in a guardianship or protective proceeding in which the named insured owner is an incapacitated or a protected person; or

(C) the personal representative of the deceased named insured owner's estate under the terms and conditions of the named insured owner's last will and testament;

even if the named insured owner transfers the interest in real property to the trustee described in this section after the effective date of the policy or commitment."

Page 12, after line 23, begin a new paragraph and insert:

"SECTION 20. [EFFECTIVE JULY 1, 2007] IC 29-1-8-3 and

1       **IC 29-1-8-4, both as amended by this act, apply to the estate of an**  
2       **individual who dies after June 30, 2007."**

3       Renumber all SECTIONS consecutively.  
      (Reference is to SB 48 as printed January 19, 2007.)

**and when so amended that said bill do pass.**

---

Representative Lawson L